IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 29, 2008

ISAAC STORY v. HOWARD CARLTON, WARDEN

Direct Appeal from the Criminal Court for Johnson County
No. 5013 Robert Cupp, Judge

No. E2007-00735-CCA-R3-HC - Filed January 12, 2009

Petitioner appeals the trial court's dismissal of his habeas corpus petition. On appeal, Petitioner argues that his original sentence for second degree murder is illegal and alleges that the judgment was changed to reflect fifteen years of service at 100 percent instead of the 30 percent release eligibility date he claims was promised him in exchange for his guilty plea. The trial court determined that the judgment appeared to have been correctly marked at 100 percent and the corrected judgment reflected the same sentence as the original. As such, the trial court determined that Petitioner's sentence was not illegal. After a thorough review of the record, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ALAN E. GLENN, J., joined.

Isaac Story, Mountain City, Tennessee, *Pro Se*.

Robert E. Cooper, Attorney General and Reporter; David H. Findley, Assistant Attorney General; and Tony Clark, District Attorney General, for the appellee, the State of Tennessee.

OPINION

On January 29, 1999, Petitioner entered negotiated guilty pleas to one count of second degree murder, one count of attempted second degree murder, one count of aggravated robbery, and one count of aggravated burglary. As to the sentence for second degree murder, Petitioner claims he was promised fifteen years to be served at 30 percent. However, neither the transcript of the guilty plea hearing nor any written plea agreement is contained in the record before us. The judgment entered on January 29, 1999 reflects service at 100 percent. There is also a corrected judgment in the record dated June 6, 1999 that reflects the same sentence of fifteen years to be served at 100 percent. In each judgment, "100%" is interlineated by handwriting where "30%" would normally be type printed on the judgment form.

In Tennessee, persons imprisoned or restrained of their liberty may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint. Church v. State, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998); see Faulkner v. State, 226 S.W.3d 358, 364 (Tenn. 2007); see also T.C.A. § 29-21-101 (2003) et seq. However, the grounds upon which a writ of habeas corpus may be issued are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record of the proceedings upon which the judgment was rendered that a court was without jurisdiction to convict or sentence the petitioner or that the petitioner is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. Archer, 851 S.W.2d at 163. A void judgment is a facially invalid judgment, clearly showing that a court did not have statutory authority to render such judgment; whereas, a voidable judgment is facially valid, requiring proof beyond the face of the judgment to establish its invalidity. See Taylor, 995 S.W.2d at 83. The burden is on the petitioner to establish, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

In the instant case, Petitioner's sentence is not illegal. He was sentenced to fifteen years at 100 percent service. This sentence is correct under Tennessee Code Annotated section 40-35-120(b)(1)(B) which designates those who commit second degree murder as "violent offenders." As a violent offender, Defendant is subject to serve his sentence at 100 percent. Service at 30 percent would have been contrary to law.

The judgment form contains a box for the trial court to "check" which type of offender Petitioner was found to be. As noted above, while there is a box for Violent offender with service at 100 percent, the box marked Standard offender had replaced the "30" percent with "100" percent. Both the original judgment and the corrected judgment reflect this. If this was error at all, it was simply a clerical one. See Tenn. R. Crim. P. 36 (allowing a clerical error to be corrected at any time.) As such, the trial court may at any time correct the judgment. See Tyrone D. Conley v. Howard Carlton, No. E2005-00049-CCA-R3-HC, 2005 WL 2862967, at *2-3 (Tenn. Crim. App., at Knoxville, Nov. 2, 2005), perm. app. denied (Tenn. Jan. 17, 2006). Accordingly, Petitioner is not entitled to relief as to this issue.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed.

THOMAS T. WOODALL, JUDGE